

Senate Standing Committee
for the
Scrutiny of Bills

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Terms of Reference

Extract from **Standing Order 24**

- (1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate or the provisions of bills not yet before the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) The committee, for the purpose of reporting on its terms of reference, may consider any proposed law or other document or information available to it, including an exposure draft of proposed legislation, notwithstanding that such proposed law, document or information has not been presented to the Senate.
- (c) The committee, for the purpose of reporting on term of reference (a)(iv), shall take into account the extent to which a proposed law relies on delegated legislation and whether a draft of that legislation is available to the Senate at the time the bill is considered.

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Senate Standing Legislation Committee Inquiries

The committee will forward any comments it has made on a bill to any relevant legislation committee for information.

- **The Committee has commented on these bills**

This Digest is circulated to all Honourable Senators.
Any Senator who wishes to draw matters to the attention of the committee under its terms of reference is invited to do so.

Acts and Instruments (Framework Reform) Bill 2014

Introduced into the House of Representatives on 22 October 2014

Portfolio: Attorney-General

Background

This bill amends the *Legislative Instruments Act 2003* and other Acts to:

- consolidate the frameworks for the publication of Commonwealth Acts and the registration of legislative and other instruments by repealing the *Acts Publication Act 1905* and incorporating the requirements for publishing Commonwealth Acts into the *Legislative Instruments Act 2003*;
- establish a new category of instruments called notifiable instruments, which will be able to be registered in authoritative form; and
- clarify provisions relating to references to ministers, departments and other government authorities, and broaden existing provisions relating to machinery of government changes.

Insufficiently subject the exercise of legislative power to parliamentary scrutiny

Schedule 1, part 2, section 10 instruments declared to be legislative instruments

Current subsection 6(a) of the *Legislative Instruments Act 2003* effectively deems any instrument ‘described as a regulation by the enabling legislation’ to be a legislative instrument (subject to current section 7, which includes categories of instruments declared not to be legislative instruments and section 9, which declares rules of court not to be legislative instruments).

This means that unless a specific exemption is provided in the enabling legislation, any regulation is a legislative instrument and subject to the provisions of the *Legislative Instruments Act*, including those relating to sunset and disallowance, which are essential aspects of the Parliamentary scrutiny of delegated legislation.

Proposed section 10 seeks to preserve this approach in relation to a regulation or Proclamation (other than one relating to commencement) and some other

instruments. Given the importance of the disallowance process to Parliamentary scrutiny, the committee notes the current drafting practice of providing for a general instrument making power (for example, the power to make instruments that are 'required or permitted' or 'necessary or convenient'). In light of the similar character of instruments based on the general power (however described e.g. regulations, rules, determinations etc.), **the committee seeks the Attorney General's advice as to why all instruments made on the basis of general instrument making powers should not be included in the definition of instruments and so deemed to be legislative instruments (so that disallowance and sunseting requirements apply unless they are explicitly excluded).**

Pending the Attorney-General's reply, the committee draws Senators' attention to the provisions, as they may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the committee's terms of reference.

Insufficiently subject the exercise of legislative power to parliamentary scrutiny

Part 2, schedule 1, item 26, sections 15D and 15V

Part 2, Division 3

These provisions seek to provide the First Parliamentary Counsel with editorial powers to amend the text of registered legislation in specified circumstances. The committee notes that the Clerk of the Senate has made a submission to the inquiry into the bill currently being undertaken by the Legal and Constitutional Affairs Legislation Committee that outlines some concerns of relevance to the Scrutiny of Bills Committee. While the Clerk has identified some practical and necessary aspects to these powers (e.g. see p. 4) the committee also notes the points made in relation to:

1. Section 15D — which will empower the First Parliamentary Counsel to correct a mistake, omission or other error in the text of registered legislation, subject to conditions. While the FPC must include in the Register a statement that the correction has been made and a brief outline of the correction in general terms, it is unclear why the correction should not be detailed with specificity. (Clerk's submission, p. 2)
2. Section 15V and the definition of editorial change in section 15X — which appear to permit a wide range of editorial and presentational

changes and there is no mechanism for FPC to be required to publicly document these changes. (Clerk's submission, p. 2)

3. Paragraph 15V(2)(b) — which appears to give the FPC discretion to make an editorial change considered desirable to align the Act or instrument with legislative drafting practice being used by the Office of Parliamentary Counsel. It is not apparent that any transparency and accountability measures apply to the use of this discretion and it is not clear whether this could diminish the legislative authority of Parliament. There does not appear to be a mechanism to resolve whether Parliament would agree with the FPC that an amendment is 'desirable'. It is also unclear how the discretion would operate in relation to the existing Parliamentary processes for Chair's amendments. (Clerk's submission, pp 2–3)

The committee therefore seeks the Attorney-General's advice as to:

- **why the requirement in relation to section 15D is for an explanation in general rather than specific terms?**
- **how editorial powers operate in other jurisdictions, who exercises them and whether there is any mechanism for transparency or oversight, including any requirement to report on the extent to which the powers are used, or on particular uses of the power.**
- **the proposed scope of the discretion for the First Parliamentary Counsel to make editorial changes to align an Act or instrument with legislative drafting practice, including how it would operate in conjunction with the existing process for Chair's amendments (and whether it would be reasonable for transparency and accountability requirements to apply to the use of this discretion).**

Pending the Attorney-General's reply, the committee draws Senators' attention to the provisions, as they may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the committee's terms of reference.

Insufficiently subject the exercise of legislative power to parliamentary scrutiny

Schedule 1, Part 1, item 12 and Schedule 1, Part 3, item 47

Schedule 1, Part 1, item 12 will, among other things, repeal section 7 of the *Legislative Instruments Act 2003*, which includes categories of instruments

declared not to be legislative instruments. Schedule 1, Part 3, item 47 will remove the table of instruments exempt from disallowance from section 44.

It is understood that it is intended that the categories of exempt instruments will be consolidated in the new regulations. **While a consolidated approach is desirable, the committee notes that in moving material from primary to delegated legislation a justification should be provided for each item or class of instrument to be exempted from disallowance or sunseting (current and new categories) and for each item or class of instrument to be removed from the tables of those instruments exempt from disallowance or sunseting.**

The committee draws this matter to the attention of the Regulations and Ordinances Committee for information.

Pending the Attorney-General's reply, the committee draws Senators' attention to the provisions, as they may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the committee's terms of reference.

Amending Acts 1970 to 1979 Repeal Bill 2014

Introduced into the House of Representatives on 22 October 2014
Portfolio: Attorney-General

Background

This bill repeals over 656 amending and repeal Acts from 1970 to 1979.

The committee has no comment on this bill.

Australian Citizenship and Other Legislation Amendment Bill 2014

Introduced into the House of Representatives on 23 October 2014

Portfolio: Immigration and Border Protection

Background

This bill amends the *Australian Citizenship Act 2007* to:

- extend good character requirements;
- clarify residency requirements and related matters;
- clarify the circumstances in which a person's approval as an Australian citizen may or must be cancelled;
- clarify the circumstances in which the minister may defer a person making the pledge of commitment to become an Australian citizen;
- clarify the circumstances in which a person's Australian citizenship may be revoked;
- enable the minister to specify certain matters in a legislative instrument;
- enable the use and disclosure of personal information obtained under the *Migration Act 1958* or the migration regulations; and
- make minor technical amendments.

The bill also amends the *Migration Act 1958* to enable the use and disclosure of personal information obtained under the *Australian Citizenship Act 2007* or the citizenship regulations.

Insufficiently defined administrative powers

Item 64, proposed section 33A

This proposed new section gives the Minister the discretion to revoke the citizenship of a person who had been registered as an Australian citizen by descent. The Minister is required to be satisfied that the approval should not have been given to register that person's citizenship on the basis that the

requirements of the Act had not been met. The requirements for citizenship by descent include the requirement in paragraph 16(2)(c) of the Act that a person is of good character at the time they are approved for registration. This proposed amendment enables the Minister to revoke citizenship if the Minister later becomes satisfied that the person in fact was not of good character at the time they were registered as a citizen by descent.

The explanatory memorandum argues that this provision is similar to paragraph 25(2)(b) ‘which allows approval of citizenship by conferral to be cancelled if the Minister is satisfied that the person is not of good character before they take the pledge’ (at p. 56). The power of revocation is considered appropriate on the basis that because ‘a citizen by descent acquires citizenship immediately upon registration, there is no time period whereby the Minister can consider whether to cancel this approval’. It may be observed, however, that in relation to the power to cancel an approval of citizenship by conferral before a person takes the pledge (at which point they gain citizenship), the power of revocation under proposed section 33A is not time-limited—that is, it may be exercised at any future time. Under proposed amendments (see item 49) the power to cancel citizenship by conferral could not be exercised after a 2 year period (which is the maximum period the Minister can defer a person the making of the pledge of commitment to become an Australian citizen). Thus whereas paragraph 25(2)(b) can be considered to enable errors to be corrected if detected relatively quickly after the original decision was made, proposed section 33A provides a standing power of revocation.

As the power of revocation under section 33A is discretionary, it may also be considered to condition an important right on insufficiently defined administrative powers. For example, an argument that a person was not of good character at the time they acquired citizenship by descent may be made at any future time leading to a discretionary decision to revoke citizenship of a person who may, by that time, be considered to have been integrated into the Australian community. Notably, if the decision was made personally by the Minister merits review of the decision would not be available (see item 72).

The committee seeks the Minister’s advice about why this proposed amendment should not be considered to make rights unduly dependent on insufficiently defined administrative powers. If the power of revocation is considered necessary (including on the basis of a changed assessment of the character requirement), the committee seeks the

Minister's advice as to whether consideration has been given placing a time limit on the exercise of the power.

Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the committee's terms of reference.

Insufficiently defined administrative powers

Item 66, proposed section 33AA

This proposed new section gives the Minister the discretion to revoke a person's citizenship in circumstances where the Minister is satisfied that the person became an Australian citizenship as a result of fraud or misrepresentation. The fraud or misrepresentation may be associated with the person's entry to Australia, the grant of a visa or the approval of citizenship. Paragraph 34AA(1)(c) provides that the Minister must also be satisfied that it would be contrary to the public interest for the person to remain an Australian citizen.

It is important to note that proposed subsection 34AA(2) provides that the fraud or misrepresentation need not have constituted an offence by any person and may have been committed by *any* person (ie it need not have been committed by the person whose citizenship may be revoked). The revocation power can only be exercised if the fraud or misrepresentation occurred during the period of 10 years before the day of revocation.

This provision raises the concern that a right is made to depend unduly on insufficiently defined administrative powers. First, the fraud or misrepresentation need not be established by a court and, in some instances, is not subject to merits review. The question of whether fraud or misrepresentation has been established is left entirely to the Minister or his or her delegate's 'satisfaction'. In relation to decisions made personally by the Minister (which are not subject to merits review, see item 72) this means factual errors about the existence of fraud or misrepresentation could only be challenged by way of judicial review. However, as an error of fact (even a serious error) is not, in and of itself, an error of law, the availability of judicial review is not an answer to this concern.

Second, the power may be exercised even if the person whose citizenship is revoked is not responsible for the fraud or representation. The explanatory memorandum argues that as ‘the power to revoke...is discretionary, it will be open to the Minister to consider arguments that the person was unaware of the fraud or misrepresentation in deciding whether to revoke their Australian citizenship’ (at p. 57). The fact remains, however, that the power is framed as a broad discretion and there are no express constraints in the legislation which would prevent the revocation of citizenship in these circumstances. Third, these concerns are exacerbated by the fact that the power may be exercised for up to 10 years after the wrongdoing occurred (even if the citizen was not responsible for that wrongdoing).

For the above reasons, the committee notes that the proposed amendment is of considerable concern and seeks advice about why it should not be considered to make rights unduly dependent on insufficiently defined administrative powers. If this provision is considered necessary, the committee also seeks advice about (1) the appropriateness of the 10 year period, and (2) why it is not possible for merits review to at a minimum be available in relation to findings that a person became an Australia citizen as a result of fraud or misrepresentation. In relation to (2) the committee notes that the AAT could review these determinations of fact and law, even if it were not able to second-guess the discretionary elements of the decision (including whether it would be contrary to the public interest for the person to remain in Australia).

Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the committee's terms of reference.

Merits review

Item 72, proposed subsection 52(4)

The effect of this subsection is that decisions which are generally reviewable by the AAT (under subsection 52(1)) will not be reviewable where the decision is made by the Minister personally and the Minister has issued a notice under section 47 that includes a statement that the Minister is satisfied that the decision was made in the public interest.

The explanatory memorandum states that the ‘purpose of new subsection 52(4) of the Act is to ensure that decisions personally made by the Minister under sections 17, 19D, 24, 25, 30, 33, 33A, 34 and subsection 36(1), where the notice under section 47 stated that the Minister is satisfied that the decision was made in the public interest, cannot be the subject of an application to the AAT for review’ (at p. 61).

In justifying the exclusion of decisions made by the Minister personally in these circumstances, the explanatory memorandum continues:

As an elected Member of Parliament, the Minister represents the Australian community and has a particular insight into Australian community standards and values and what is in Australia’s public interest. As such, it is not appropriate for an unelected administrative tribunal to review such a personal decision of a Minister on the basis of merit, when that decision is made in the public interest. As a matter of practice it is expected that only appropriate cases will be brought to the Minister’s personal attention, so that merits review is not excluded as a matter of course.

New subsection 52B(1) of the Act, inserted by item 73 below, provides transparency and accountability measures concerning personal decisions of the Minister which are not reviewable by the Administrative Appeals Tribunal, by requiring a statement to be tabled in Parliament when such a decision is made.

Further, the statement of compatibility argues that, although the general policy is that administrative decisions which are apt to adversely affect the interests of a person should be subject to merits review, there may be factors that justify the exclusion of merits review. In this instance, the statement of compatibility suggests that exclusion is appropriate as ‘policy decisions of a high political content’, ‘particularly those made personally by the Minister, may be justifiably excluded from merits review’ (at p. 14). The amendment is argued to be ‘aimed at the policy objective of protecting personal decisions of the minister, an elected public official, made in the public interest from review by an unelected administrative tribunal’ (at p. 14). The statement of compatibility also notes that the amendment ‘seeks to uphold the Minister’ role in representing the Australian community, having gained a particular insight into community standards and values’ (at p. 14).

In response it may be noted that the Administrative Review Council has emphasised (1999 paper on *What Decisions should be Subject to Merits Review?*), that the fact a decision-maker is a Minister ‘is not, of itself, relevant to the question of review’ and that attention should focus on the nature of the decision-making power ‘in particular its capacity to affect the interests of

individuals'. Further, it is stated that although policy decisions of the 'highest consequence to government or major political issues may be regarded as inappropriate for merits review', the 'high political content exception focuses upon the nature of the decision' (see 5.20–5.23).

On the basis of this approach it is suggested that it is not appropriate to exclude merits review for the 'policy objective' of insulating decisions made by the minister, even if those decisions are declared to have been made in the public interest. The high political content exception should, if it is submitted, focus on the nature of the decision, not the decision-maker. Although it is true that there are general policy questions that arise, for example, in applying 'good character' requirements, any explicit policy developed to guide the decision-making in these areas would be considered by the AAT in exercising its review function. (To avoid any doubt about this, the legislation could be amended to require the AAT to apply general policy on issues relevant to the application of requirements that have a public interest dimension). In this respect, it may be argued that the Minister's role in 'representing the Australian community' can be pursued through developing applicable policy. Although personal intervention may be needed in exceptional circumstances, it is suggested that a reference to the decision being made in the public interest does not adequately explain the exclusion of review.

Finally, it may be noted that errors may occur in some decisions as to a question of fact or law, and review of these sorts of questions (e.g. whether there was a misrepresentation) would not require the AAT to second-guess judgments about what the public interest requires. This raises a more general question: why should all aspects of decisions made personally by the Minister be excluded from review? For example, the AAT could be given jurisdiction to review whether there are grounds to be satisfied that fraud or misrepresentation resulted in a person becoming an Australian citizen, but not to the further determinations about whether it would be 'contrary to the public interest for the person to remain an Australian citizen' (see proposed subsection 34AA(1)). For this reason, it appears to the committee that the case for excluding merits review should be made in relation to each of the reviewable powers and the particular elements of those powers.

The committee is therefore not yet persuaded that the exclusion of merits review is appropriate, and seeks the Minister's more detailed justification for the proposed approach.

Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the committee's terms of reference.

Merits review

Item 73, proposed sections 52A and 52B

These proposed amendments provide the Minister with a power to set aside decisions of the AAT arising from review of decisions about the approval of a person to become an Australian citizen concerning character or identity if the Minister is satisfied that it would be in the public interest to do so. (The power does not extend to decisions to revoke citizenship.)

In justification of this provision the explanatory memorandum points to three significant decisions by the AAT which are claimed to be 'outside community standards' and three others in which people have been found to be of 'good character despite having committed domestic violence offences'. The explanatory memorandum also notes that there 'is the potential for some decisions made by the AAT on identity grounds to pose a risk to the integrity of the citizenship programme' (at p. 62). However, the central justification for the approach appears to be that it 'seeks to uphold the Minister's role in representing the Australian community and protecting its interests' (statement of compatibility p. 15). The statement of compatibility continues:

It is recognised that such a power to set aside AAT decisions is a serious one, and it would be used sparingly in cases where a decision of the AAT about the character and identity of a citizenship applicant is outside community standards and expectations. (statement of compatibility, p. 15)

The argument is further buttressed by reference to the 'transparency and accountability' that will 'be provided by a statement tabled in Parliament within 15 sitting days of the decision being made'—which is a requirement also introduced by this item.

Although it may be accepted that the government has a legitimate interest in aligning citizenship decisions with community standards, it is suggested that this must be balanced with community expectations relating to the integrity of the system of independent merits review. The availability of merits review in relation to decisions which may adversely affect important individual interests

can be thought of as an essential part of the Australian administrative justice system. As such, aligning decisions with the Minister's view of community standards *in individual cases* is not the only consideration relevant to assessing the justification of the proposed power to override AAT determinations.

Any system of independent merits review runs the risk that a tribunal may reverse a decision preferred by the original decision-maker or the Minister. However, it remains unclear why it is not possible to incorporate community standards and other policy objectives of the government into AAT decision-making in a manner which does not enable the Minister to reverse AAT decisions in individual cases (given the risks that this poses to community perceptions about the availability of independent merits review and, also, the risk that individual cases may be unduly influenced by political considerations). The AAT long accepted that it will not depart from government policy unless there are 'cogent reasons' against its application in the individual circumstances of a case, especially in cases where the policy has been exposed to parliamentary scrutiny. (See *Re Drake and Minister for Immigration and Ethnic Affairs (No 2)* (1979) 2 ALD 634). This does not guarantee that in rare instances clear government policy will not be applied, but it does suggest that such cases will, in relative terms, be few. In this respect it may also be noted that the explanatory memorandum does not give a clear sense of the scale of the problem, other than to cite a handful of cases.

The committee therefore seeks the Minister's advice as to whether consideration has been given to clarifying government policy as an adequate and more appropriate mechanism to provide general input relevant to reflecting community standards, rather than overriding outcomes in individual cases.

Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the committee's terms of reference.

Merits review

Item 71, proposed subsection 52(2A)

The effect of this proposed amendment is to align access to merits review for conferral applicants under 18 years of age with citizenship eligibility requirements. The statement of compatibility explains that:

Persons ‘aged 18 who apply under subs 21(5) to become an Australian citizen currently have a right of merits review even when that right to merit review is futile because [they] do not meet the objective legislative requirement that [they] must be a permanent resident to be eligible for citizenship’ (at p. 16). The statement of compatibility continues:

The proposed amendments provide that persons under the age of 18 who are permanent residents or hold a permanent resident visa prescribed for the purposes of subs 21(5) are eligible to apply for merit review of an adverse decision made under subs 21(5). This means that persons under the age of 18 who are applicants for conferral of citizenship under subs 21(5) and who are unable to meet the objective criteria of being a permanent resident or holding a prescribed visa will no longer have a futile right to review.

The justification for excluding merits review for persons who do not meet the objective criteria of being a permanent resident or holding a prescribed visa are that (see the statement of compatibility, p. 16):

- the review body is not burdened by a caseload that has no prospect of success at review;
- the availability of informal internal review where it is claimed that the finding that the person was not a permanent resident at the time of application was an error of fact that led to a jurisdictional error;
- the availability of judicial review.

However, the committee notes that it does not consider the availability of judicial review to be a factor that justifies the exclusion of merits review. It is further noted that the justification for excluding merits review accepts that errors of fact about whether a person is a permanent resident at the time of application (an objective criterion) may be made. Where there is an error of fact it cannot be said that all cases would have no prospect of success. As such, the explanation provided for excluding merits review in the AAT

appears to be that any factual errors can be corrected through ‘informal internal review’ (see the second dot point outlined above).

The committee therefore seeks the Minister's advice as to a fuller explanation of the nature of factual errors that may arise in this context and, in particular, why what appears to be a non-statutory system of internal review is an adequate mechanism for correcting such errors. The committee's consideration of this provision would benefit from an explanation of whether there can be disagreement about the objective criteria based on the evidence or whether factual errors will only, in practice, occur due to administrative error.

Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the committee's terms of reference.

Delegation of legislative power Item 76, new subsection 54(2)

This item will provides that 'subsection 54(2) of the Act provides that without limiting subsection 54(1), the Citizenship Regulations may confer on the Minister the power to make legislative instruments' (explanatory memorandum, p. 66).

The explanatory memorandum, at page 66, states that the purpose of the amendment is to:

...enable the Minister to specify instruments in writing under the Citizenship Regulations. This will enable the Minister to make legislative instruments under the Citizenship Regulations that include (but will not be limited to) the payment of citizenship application fees in foreign currencies and foreign countries.

While the use of delegated legislation in technical and established circumstances (such as the payment of fees) is not controversial, it appears unusual for primary legislation to provide for the making of a regulation which, in turn, provides a minister with a wide power to make further delegated legislation for unspecified purposes. **The committee therefore**

seeks the Minister's advice as to why an appropriately described power, or powers, to make delegated legislation cannot be included in the primary act. The committee is also interested in whether this type of power exists in other legislation.

Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the committee's terms of reference.

Retrospective application Subsections 78(3) and (4)

Proposed new subsections 12(4) and 12(5) provide that a person born in Australia can no longer acquire citizenship automatically on the basis of being ordinarily resident throughout the 10 year period beginning on the day the person is born if at any time during that period (i) they were an unlawful non-citizen or (ii) the person was outside Australia and, at that time, the person did not hold a visa permitting the person to travel to, enter and remain in Australia.

The effect of subitem 78(3) is to apply the new exceptions in subsections 12(4) and (5) to a person's right to acquire citizenship automatically pursuant to subsection 12(1) of the Act to persons who were born before the commencement of those provisions. Subitem 72(4) clarifies (see explanatory memorandum at 71) that the exceptions will apply even if the time a person was an unlawful non-citizen or outside Australia without the requisite visa occurred prior to the commencement of the provision. The practical effect of these subitems is that a person who may be expecting to acquire citizenship on the basis of the existing provisions will not be able to do so, even in circumstances where they are due to acquire citizenship very soon after the commencement of the provisions.

This position may be contrasted with the application provision relevant to proposed new subsection 12(3), which also provides for an exception to the normal rule applicable to the automatic acquisition for persons born in Australia. Subsection 12(3) provides that a person will not be ordinarily resident in Australia throughout the period of 10 years from the day of their birth if a parent of the person had diplomatic privileges and immunities.

Subitem 78(2) provides that this proposed amendment will only apply in relation to births that occur after that date of commencement.

Although it may be argued that subitem 78(3) and subitem 78(4) do not commence retrospectively because they merely take account of antecedent facts as the basis for applying a new rule, it may also be argued that these applications raise a real question of fairness. That question of fairness arises because a person who, in some cases, may have spent a lengthy period in Australia (up to 10 years) and who reasonably expects, on the basis of the current provisions, to soon acquire citizenship, will no longer acquire citizenship. In these circumstances there is a risk that a person may have reasonably relied on the existing provisions on the assumption that any changes would not apply to persons born before commencement. The explanatory memorandum argues that:

If the provisions only applied prospectively, it would enable a person to acquire citizenship automatically if they turned 10 years of age after commencement of the provision even if, for example, they had extended periods as an unlawful non-citizen prior to commencement of the provision. This would be contrary to the purpose of the amendments.

The committee seeks the Minister's fuller justification for the approach on the basis that the explanation provided does not address the fairness of the intended purpose of the amendments. The committee also seeks advice as to why it is considered fair to apply the provisions retrospectively (in the sense described above) in relation to subsection 12(4) and (5) but that only prospective application is provided for in relation to subsection 12(3).

Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.

Retrospective application Subsection 78(18)

This amendment relates to AAT decisions reviewing a decision made by a delegate of the Minister. It will enable the Minister to set aside a decision made by the AAT and make a new decision apply to the AAT decision. Although the amendment only applies to AAT decisions made after

commencement, it is possible that the decision under review, the application for review, and the hearing of the review may all have occurred prior to commencement.

The explanatory memorandum explains the effect of the provision, but does not address whether it may be considered unfair for the review process applicable to a decision to be changed to apply to decisions made prior to commencement. This unfairness is arguably exacerbated when more stages of the review process have been completed. Public perceptions of the integrity of any system of review may also suffer where there is a willingness to change the rules governing the process of appeal (including who is the final appellate decision-maker) after an appealable decision has been made and an appeal has been initiated.

The committee therefore seeks the Minister's more detailed explanation for the approach.

Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.

Australian War Memorial Amendment Bill 2014

Introduced into the House of Representatives on 30 October 2014

Portfolio: Veterans' Affairs

Background

This bill amends the *Australian Memorial Act 1980* to prohibit the levying of entry or parking fees at the Australian War Memorial premises.

The committee has no comment on this bill.

Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014

Introduced into the House of Representatives on 22 October 2014

Portfolio: Communications

Background

This bill amends the *Broadcasting Services Act 1992* (BSA), the *Radiocommunications Act 1992* and the Australian Communications and Media Authority Act 2005 to:

- remove certain requirements that related to the initial planning of services in the broadcasting services bands spectrum;
- remove the requirement for reports made by certain subscription television licensees and channel providers under the New Eligible Drama Expenditure Scheme to be independently audited;
- remove the requirement for codes of practice to be periodically reviewed; remove the requirement for certain licensees to provide an annual list of their directors and captioning obligations;
- clarify the calculation of media diversity points in overlapping licence areas; provide for grandfathering arrangements for certain broadcasting licensees;
- make technical amendments for references to legislative instruments;
- remove redundant licensing and planning provisions that regulated the digital switchover and restack processes; and
- make consequential amendments.

Insufficiently subject the exercise of legislative power to parliamentary scrutiny

Schedule 4, item 1

This item repeals section 123A of the *Broadcasting Services Act 1992*. This section requires the ACMA to conduct periodic reviews to assess whether

codes developed under subsections 123(3A) and (3C) are in accordance with community standards. These codes of practice relate to the classification system for Films under the *Classification (Publication, Films and Computer Games) Act 1995*. Subsection 123A(2) requires the ACMA to make recommendations to the Minister that the BSA be amended if, after conducting a review, it concludes that the codes are not in accordance with prevailing community standards; subsection 123A(3) requires the Minister to table a copy of such a recommendation in each House of Parliament within 15 sitting days after receiving the recommendation.

The explanatory memorandum (at p. 5) justifies this proposed amendment as follows:

There are alternative mechanisms for the ACMA to determine whether these provisions operate in accordance with prevailing community standards. This may be based upon the volume of complaints received from viewers or the ACMA's own inquiries. In addition the industry codes of practice are periodically reviewed and the ACMA is required to ensure that a draft code provides appropriate community safeguards prior to registration.

Regrettably, this justification does not address the question of whether it is appropriate that Parliament be deprived of the function of scrutinising advice about the exercise of legislative power (i.e. the ACMA recommendations in relation to whether the codes comply with community standards).

The committee therefore seeks the Minister's advice as to the removal of this function and why these amendments should not be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny.

Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the committee's terms of reference.

Building Energy Efficiency Disclosure Amendment Bill 2014

Introduced into the House of Representatives on 22 October 2014

Portfolio: Industry

Background

This bill amends the *Building Energy Efficiency Disclosure Act 2010* (BEED Act) to:

- allow building owners who receive unsolicited offers for the sale or lease of their office space and transactions between wholly-owned subsidiaries to be excluded from energy efficiency disclosure obligations;
- enable certain auditing authorities to directly provide or approve ratings used in Building Energy Efficiency Certificates (BEEC);
- enable businesses to nominate a commencement date for a BEEC which is later than the date of issue;
- remove the need for new owners and lessors to reapply or pay the application fee for fresh exemptions if there is an existing one in place for a building; and
- remove the standard energy efficiency guidance from each BEEC.

Delegation of legislative power

Item 20, proposed paragraph 17(3)(c)

This paragraph provides that the secretary may grant an exemption from an energy efficiency disclosure obligation 'in circumstances prescribed by regulation for the purposes of this paragraph'. The explanatory memorandum notes that a new class of exemptions will be set out in the regulations which will provide exemptions to building owners who receive unsolicited offers for the sale or lease of their office space. However, there is no discussion in the explanatory memorandum as to why this new category should be provided for by regulation and why it is necessary for a power for further exemptions to be included by legislative instrument. **The committee therefore seeks the**

Minister's more detailed advice about the appropriateness of this delegation of power.

Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the committee's terms of reference.

Civil Law and Justice Legislation Amendment Bill 2014

Introduced into the Senate on 29 October 2014

Portfolio: Attorney-General

Background

This bill amends various Acts relating to law and justice and is an omnibus bill.

Schedule 1 amends the *Bankruptcy Act 1966* in relation to:

- the Official Trustee, the Official Receiver and the National Disability Insurance Scheme;
- the offence of concealment;
- declarations in statements received electronically; indictable and summary offences; and
- the location of certain offences in the Act;

Schedule 2 amends the *International Arbitration Act 1974* to clarify the application of the Act to international commercial arbitration agreements.

Schedule 3 amends the *Family Law Act 1975* to:

- clarify the appeal rights available for court security orders;
- and create access to the Family Court of Australia for court security orders made by the Family Court of Western Australia; and
- make technical amendments.

Schedule 4 amends the *Court Security Act 2013* and related amendments to the *Family Law Act 1975* to:

- provide for the disposal of unclaimed items seized by or given upon request to court security officers; and

- clarify the processes by which court security orders can be varied and revoked;

Schedule 5 amends the *Evidence Act 1995* to:

- reflect changes to the Model Uniform Evidence Bill;
- remove all references to the Australian Capital Territory; and
- make technical amendments.

Schedule 6 amends the *Protection of Movable Cultural Heritage Act 1986* to allow the National Cultural Heritage Committee to continue to function when membership falls below the maximum number.

Schedule 7 amends the *Copyright Act 1968* to extend the legal deposit scheme to include work published in electronic format.

The committee has no comment on this bill.

Corporations Amendment (Publish What You Pay) Bill 2014

Introduced into the Senate on 28 October 2014

By: Senator Milne

Background

This bill amends the *Corporations Act 2001* to

- require Australian companies involved in extractive industries to disclose any payments made to foreign countries over \$100 000 on a country-by-country and project-by-project basis; and
- require the Australian Securities and Investments Commission to publish the Publish What You Pay reports on their website within 28 days of their receipt.

The committee has no comment on this bill.

Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014

Introduced into the House of Representatives on 22 October 2014

Portfolio: Treasury

Background

This bill amends the *Corporations Act 2001* (Corporations Act) and the *Australian Securities and Investments Commission Act 2001* (ASIC Act) to:

- removes the ability for 100 shareholders with voting rights to call a general meeting, but retains the right for shareholders with 5 per cent of voting rights to require a general meeting to be called;
- improve and reduce remuneration reporting requirements;
- clarify the circumstances in which a financial year may be less than 12 months;
- exempt certain companies limited by guarantee from the need to appoint or retain an auditor;
- improve the operation of the Takeovers Panel by allowing takeover matters to be dealt with more efficiently; and
- extend the Remuneration Tribunal's remuneration setting responsibility to include certain Corporations Act bodies.

The committee has no comment on this bill.

Counter-Terrorism Legislation Amendment Bill (No. 1) 2014

Introduced into the Senate on 29 October 2014

Portfolio: Attorney-General

Background

This bill amends the *Criminal Code Act 1995* and the *Intelligence Services Act 2001* to:

- enable the Australian Federal Police to request, and an issuing court to make, a control order in relation to those who ‘enable’ and those who ‘recruit’ in relation to a ‘terrorist act’ or ‘hostile activity’;
- reduce the information required to be provided to the Attorney-General when seeking consent to request an interim control order;
- extend the time before the material provided to an issuing court must subsequently be provided to the Attorney-General from 4 hours to 12 hours where a request for an urgent interim control order has been made to an issuing court;
- require the Attorney-General to advise the Parliamentary Joint Committee on Intelligence and Security before amending a regulation that lists a terrorist organisation and to allow the committee to review any proposed change during the disallowance period;
- provide that it is a function of the Australian Secret Intelligence Service (ASIS) to provide assistance to the Australian Defence Force (ADF) in support of military operations and to cooperate with the ADF on intelligence matters; and
- amend arrangements for emergency ministerial authorisations which apply to ASIS, the Australian Signals Directorate and the Australian Geospatial Intelligence Organisation.

**Undue trespass on personal rights and liberties—control orders
Schedule 1, item 7, proposed paragraphs 104.2(2)(c) and 104.2(2)(d)
of the *Criminal Code***

**Schedule 1, item 11, proposed subparagraphs 104.4(1)(c)(vi) and
104.4(1)(c)(vii) of the *Criminal Code***

As the committee has recently stated:

The control order regime established by Division 104 of Part 5.3 of the *Criminal Code* constitutes what is generally acknowledged to be a substantial departure from the traditional approach to restraining and detaining persons on the basis of a criminal conviction. That traditional approach involves a number of steps: investigation, arrest, charge, remand in custody or bail, and then sentence upon a conviction.

In contrast, control orders provide for restraint on personal liberty without there being any criminal conviction (or without even a charge being laid) on the basis of a court being satisfied on the balance of probabilities that the threshold requirements for the issue of the orders have been satisfied. Protections of individual liberty built into ordinary criminal processes are necessarily compromised (at least, as a matter of degree). The extraordinary nature of the control order regime is recognised in the current legislation by the setting of a sunset period, due to expire in December 2015 (*14th Report of 2014*, p. 797).

In view of this general concern, any proposal to extend the grounds on which an interim control order can be requested, or issued, must be subject to close scrutiny.

Two further preliminary matters may also be noted. First, the committee has expressed its concurrence with the position stated by the Parliamentary Joint Committee on Intelligence and Security (PJCIS) that a new sunset date of 24 months after the next federal election would enable the Parliament sufficient time to fully consider the appropriateness of the current control order regime, and that this consideration ‘should be done through a thorough public review of each power by the PJCIS to be completed 18 months after the next federal election’ (*14th Report of 2014*, p. 800).

Second, in its original comment on the continuation and expansion of the control order regime in the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014, the committee also noted that it was a matter of concern that objections raised by the INSLM in relation to the existing control order regime (chapter II of the INSLM’s second annual report,

20 December 2012, pp 6–44) had not been addressed in the explanatory memorandum to that bill (*14th Report of 2014*, p. 798).

At a general level, the committee expresses reservations about expanding the grounds upon which a control order can be requested and issued in the absence of a comprehensive public review of the operation of the existing provision (which, as noted above, is to occur within 18 months after the next federal election) and any detailed consideration of the objections raised by the INSLM and/or PJCIS.

In light of this background, the committee is concerned that item 7 proposes to introduce two new grounds upon which a senior AFP member can seek the Attorney-General's consent to request an interim control order. The first of these grounds is that the senior AFP member 'suspects on reasonable grounds that the order in the terms to be requested would substantially assist in preventing the provision of support for the facilitation of a terrorist act' (proposed paragraph 104.2(2)(c)). It is important to note that item 11 also proposes to expand the grounds upon which an issuing court can make an interim control order consistent with the amendments proposed in item 7 (proposed paragraph 104.4(1)(c)(vi)).

Existing paragraph 104.2(2)(a) provides that a ground for seeking the Attorney-General's consent to request an interim control order is a that the senior member 'suspects on reasonable grounds that the order in the terms to be requested would substantially assist in preventing a terrorist act'. The explanatory materials do not fully explain the extent to which proposed paragraph 104.2(2)(c) would be a ground for seeking a control order beyond circumstances already covered by existing paragraph 104.2(2)(a). In particular, it is unclear whether an order sought on the basis of a reasonable suspicion that the order would substantially assist in preventing the provision of support for the facilitation of a terrorist act would be available even if the intended support would, in fact, not substantially assist an intended perpetrator in undertaking a terrorist act. **The committee therefore requests further clarification from the Attorney-General in relation to the extent to which:**

- **consent may be sought to request an interim control order under proposed paragraph 104.2(2)(c); or**
- **an interim control order may be issued under subparagraph 104.4(1)(c)(vi)**

even if the order would, in fact, not substantially assist in preventing a genuine terrorist threat.

The second of the new grounds upon which a senior AFP member can seek the Attorney-General's consent to request an interim control order is that the member 'suspects on reasonable grounds that the person has provided support for or otherwise facilitated the engagement in a hostile activity in a foreign country' (proposed paragraph 104.2(2)(d)). Again, item 11 also proposes to expand the grounds upon which an issuing court can make an interim control order consistent with the amendments proposed in item 7 (proposed paragraph 104.4(1)(c)(vii)).

The explanatory memorandum (at pp 19 and 21) suggests that it:

...is appropriate to include this additional ground on the basis that a person who has actually provided support or facilitated a hostile activity in a foreign country has not only a demonstrated ability but also a demonstrated propensity to engage in conduct in support or facilitation of conduct akin to a terrorist act.

Given the general reservations about the control order regime stated above, it is a matter of concern that there is no requirement that the support for, or facilitation of, engagement in a hostile activity be substantial. This means that control orders could conceivably be imposed in relation to actions which were not important contributors to another person undertaking hostile activities in a foreign country. Nor is it clear whether the expression of support in conventional or social media would be covered by this provision. Neither the nature nor extent of support or facilitation is defined. The result is that this expansion of the operation of the control order regime is of broad yet uncertain operation. Noting the committee's general comments about the potential for the control order regime to unduly trespass on personal rights and liberties, **the committee requests the Attorney-General's advice as to the rationale for the proposed approach, including whether consideration has been given to more precisely defining what may constitute 'support for' a hostile activity in a foreign country, for example, a requirement aimed at limiting the application of the provision to substantial support for a hostile activity in a foreign country.**

The committee also notes that a further potential difficulty with this new ground for the imposition of control orders is that the activities on which it is based need not be linked to terrorism. **Given that 'hostile activity' might**

cover a wide range of activities, the committee also requests further clarification from the Attorney-General as to:

- why support for, or facilitation of engagement in, a ‘hostile activity’ can be seen as demonstrating a propensity ‘to engage in conduct in support or facilitation of conduct akin to a terrorist act’; and
- whether ‘hostile activity’ can be explicitly connected to terrorism in the bill.

Pending the Attorney-General’s reply, the committee draws Senators’ attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee’s terms of reference.

**Undue trespass on personal rights and liberties—control orders
Schedule 1, item 8, proposed replacement subsections 104.2(3),
104.2(3A) and 104.2(4) of the *Criminal Code***

Items 8 and 9 both propose amendments to the process for seeking an interim control order: first relating to obtaining the Attorney-General’s consent to request an interim control order, and secondly (once consent has been granted) when providing information to a court outlining the basis on which the issue of the interim control order is sought.

The purpose of item 8 is said to be to provide ‘greater flexibility when seeking the Attorney-General’s consent [to request an interim control order]’ (explanatory memorandum, p. 19). Whereas the current provisions require the AFP to provide the Attorney-General with *all* documents that will be provided to the issuing court, the replacement provisions will only require the AFP to provide a draft of the interim order, information (if any) concerning the person’s age, and a summary of the grounds on which the order should be made.

The explanatory memorandum states (at p. 1) that this amendment (along with other amendments in relation to the control order regime) have been developed ‘in response to operational issues identified following...counter-terrorism raids’. It is further stated that ‘it is not necessary for the Attorney-General to consider all material’ and the ‘role of the Attorney-General is to be satisfied that it is appropriate for an application for an interim control order to

be made, rather than to exercise the same role as the issuing court in considering the application' (p. 19). Beyond this, there is no detailed justification specifically directed to the proposed amendments to subsections 104.2(3), 104.2(3A) and 104.2(4).

In view of the general concerns about the control order regime stated above, any proposal which may be considered to diminish safeguards associated with the process for obtaining a control order must be subject to close scrutiny. On one view it is appropriate and useful for the Attorney-General to undertake a process similar to that subsequently required of the court, which will ensure that a thorough preliminary process is in place and the effort involved will be directly relevant to the material to be presented to the court. Further, even if the current provisions do involve a degree of redundancy (by requiring both the Attorney-General and the issuing court to consider all the material) prior to making their respective decisions, this redundancy may be justified given the extraordinary nature of the control orders and the severe risks posed to individual liberty.

The committee therefore seeks a fuller justification from the Attorney-General in relation to the necessity of, and the rationale for, removing what appears to be a safeguard in the existing regime. The committee also restates its concern that these changes are in the absence of a comprehensive public review (which will occur within 18 months after the next federal election) of the operation of the existing provision and any detailed consideration of the objections raised by the INSLM and/or PJCIS.

Pending the Attorney-General's reply, the committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.

**Undue trespass on personal rights and liberties—control orders
Schedule 1, item 9, subsections 104.3(d)(i) and 104.3(d)(ii) of the
*Criminal Code***

Once the Attorney-General's consent has been obtained to seek an interim control order from the court, the senior AFP officer needs to present specified information to the court. Currently in relation to each of the information obligations the AFP officer 'is required to provide the court with an

explanation of ‘each’ obligation, prohibition and restriction as well as information regarding why ‘any of those’ obligations, prohibitions or restrictions should not be imposed’ (explanatory memorandum, p. 20). However, the approach proposed in item 9 would only require that an AFP member provide a holistic explanation as to why the proposed obligations, prohibition or restrictions should be imposed, rather than addressing each of the items individually. Although the explanatory materials explain the effect of this amendment there is no detailed justification provided.

The committee therefore seeks a detailed justification of the necessity of removing the requirement that an AFP officer provide the court with an explanation of each individual obligation, prohibition or restriction as well as information regarding why any of those obligations, prohibitions or restrictions should not be imposed. The committee also notes that it is a matter of considerable concern that a safeguard in the existing regime is being removed in the absence of a comprehensive public review (noting that it is anticipated that a review will occur within 18 months of the next federal election) and any detailed consideration of the objections raised by the INSLM and/or PJCIS.

Pending the Attorney-General’s reply, the committee draws Senators’ attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee’s terms of reference.

**Undue trespass on personal rights and liberties—control orders
Schedule 1, item 12, proposed replacement paragraph 104.4(1)(d) of
the *Criminal Code***

Currently, it is necessary for the issuing court to be satisfied on the balance of probabilities that ‘each of the obligations, prohibitions and restrictions to be imposed on the person by the order is reasonably necessary, and reasonably appropriate and adapted, for the purpose of one of the objects of the Division (explanatory memorandum, p. 22). Proposed replacement paragraph 104.4(1)(d) replaces this itemised approach so that the court needs only to be ‘satisfied on the balance of probabilities that ‘the order’ is reasonably necessary, and reasonably appropriate and adapted, for the purpose of one of the objects of the Division’ (explanatory memorandum, p. 22). This item is related to item 9, which reduces the burden on a senior AFP member when requesting an interim control order. Consequently, item 12 changes the test for

the issuing court when making an interim control order (explanatory memorandum, pp 21 and 22).

It may be apprehended that the current approach, which requires an issuing court to address each individual obligation, prohibition or restriction provides a greater level of accountability and minimises the risk that a control order will be more restrictive of individual liberty than is strictly necessary. Although the explanatory materials explain the effect of this amendment there is no detailed justification provided. Indeed, the statement of compatibility (in a passage arguing that the amendments which expand the grounds for seeking a control order are a reasonable and proportionate limitation on free movement) points to the existing terms of 104.4(1)(d), which require that each of the obligations, prohibitions or restrictions be justified (see p. 8 [35]).

The committee therefore seeks a detailed justification of the necessity of removing the requirement that each individual obligation, prohibition or restriction be assessed by the court to ensure that it is reasonably necessary, and reasonably appropriate and adapted, for the purpose of one of the objects of the Division. The committee also restates its view that it is a matter of considerable concern that a safeguard in the existing regime is being removed in the absence of a comprehensive public review (noting that it is anticipated that a review will occur within 18 months of the next federal election) and any detailed consideration of the objections raised by the INSLM and/or PJCIS.

Pending the Attorney-General's reply, the committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.

**Undue trespass on personal rights and liberties—control orders
Schedule 1, item 20, subsections 104.10(1) and 104.10(2) of the
*Criminal Code***

This item proposes to amend subsection 104.10(1) so that, where an urgent interim control order has been requested without the Attorney-General's consent, the senior AFP member who made the request must seek the Attorney-General's consent within 12 hours of making the request. The existing time within which consent must be sought is 4 hours.

The explanatory memorandum justifies this increase as follows:

The amendment ... reflects the fact that it may not always be practical or even possible to seek the Attorney-General's consent within 4 hours of making a request for an urgent interim control order. For example, the Attorney-General may be in transit between the east and west coasts of Australia and unable to be contacted for a period of more than 4 hours.

In light of the significance of the increase in time, the committee seeks a more comprehensive analysis of why this proposal is necessary, including whether, in an emergency situation, it is impossible or merely inconvenient to contact the Attorney-General if he or she is in transit. In addition, the committee seeks advice as to whether it may be possible to seek another minister's consent in such situations instead of increasing the amount of time in which consent must be sought. The committee again expresses its concern that this proposal is being put forward in the absence of a comprehensive public review.

Pending the Attorney-General's reply, the committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.

**Undue trespass on personal rights and liberties and insufficiently defined administrative powers—class authorisations
Schedule 2, items 4, 8–11, 14, 17, 22, 26, 31 (amendments to the
Intelligence Services Act 2001)**

These items will 'enable the Minister responsible for ASIS to give an authorisation to undertake activities for the specific purpose, or for purposes which include the specific purpose, of producing intelligence on a specified class of Australian persons or to undertake activities or a series of activities that will, or is likely to, have a direct effect on a specified class of Australian persons' (explanatory memorandum, p. 28).

Prior to issuing an authorisation, the Minister must have received a request from the Defence Minister for assistance to the Defence force in support of military operations (item 8, proposed paragraph 9(1)(d)). Further, in cases where the class of persons to which an authorisation relates is, or is likely to be, involved in a threat or likely threat to security, the Minister must also obtain the agreement of the Attorney-General (as the Minister responsible for

administering the ASIO Act) (paragraph 9(1A)(b)). Item 14 proposes changes that will enable the Attorney-General to give his or her agreement in relation to any Australian person in a specified class.

Under the existing provisions any section 9 authorisation must be given on an individual basis. This means that the specific circumstances of each individual case must be considered by the Minister; the same point applies in relation to the Attorney-General's agreement under existing paragraph 9(1A)(b) which is required if the Australian person is, or is likely to be, involved in activities that are, or are likely to be, a threat to security.

The authorisation powers are apt to adversely affect the rights of individuals who are the subject of an authorisation in significant ways, for example, in relation to the right to privacy. The current provisions, which require individual authorisation, mean that the existing safeguards in the IS Act, such as the thresholds for granting authorisations, reporting requirements, and the oversight of the Inspector-General of Intelligence and Security (IGIS) are likely to operate more effectively. A clear risk of class authorisations is that they may be overly-inclusive. The idea that an entire class of persons, as opposed to an individual, are or are likely to be involved in certain activities or pose particular threats—in the absence of individual consideration to each member of the class—may be based on generalisations. Another related risk is that the class may not be specified with adequate precision.

The explanatory memorandum states the Minister must be satisfied that '*all* persons in the class of Australian persons will or are likely to be involved in one or more of the activities set out in paragraph 9(1A)(a)' (p. 28). However, paragraph 9(1A)(a), as it is proposed to be amended, would require that the Minister be satisfied that 'the Australian person, or the class of Australian persons, mentioned...is, or is likely to be, involved in one or more of the following activities' (listed in subparagraphs 9(1A)(a)(i)–(vii)). If it were the case that the Minister must be satisfied that all of the persons in the class met the threshold requirements (as indicated in the explanatory memorandum) the practical case for class authorisations would be unclear, as the Minister would be required to consider individual cases in any event. If the intention is that the threshold requirements must be met in relation to *all* of the members of the class, then an amendment to the bill may need to be considered to put this beyond doubt.

The explanatory memorandum contains very little justification for the extension of these powers and, in particular, why it is considered necessary to

expand these authorisation powers so they may be exercised in relation to classes of Australian persons. For this reason, the committee considers that the amendments risk undue trespass on personal rights and liberties. Further, the explanatory materials do not provide examples of the sorts of classes that may be specified or why some limitations should not be placed on how classes are specified. A class of persons may be specified in a variety of ways and there is a risk that membership in the class may not be clear or may be too broad, given the nature of the powers being exercised. To the extent specification of a class is insufficiently clear, this may diminish the efficacy of the oversight of the IGIS. For this reason, the amendments may make rights and liberties depend on insufficiently clear administrative powers.

The committee therefore seeks the Attorney-General's advice as to the rationale for the proposed approach in light of the above comments, including in relation to the impact that class authorisations may have on oversight by the IGIS and whether it is intended that the Minister must be satisfied that *all* of the persons in a class meet the threshold requirements set out in paragraph 9(1A)(a).

Two related matters of concern arise in relation to class authorisations. As noted above, the authorisations must be based on a request from the Defence Minister and, in some cases, are dependent on the agreement of the Attorney-General. These requests and agreements do not appear to be time-limited. **Given that the appropriateness of a request or agreement is dependent on factual matters which may change over time, the committee also seeks the Attorney-General's advice in relation to the rationale for this approach, and in particular, whether a request (by the Defence Minister) and agreement (from the Attorney-General) should expire after a defined period**

Pending the Attorney-General's reply, the committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference. They may also be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the committee's terms of reference

Insufficiently defined administrative powers—emergency authorisations**Schedule 2, item 18, proposed section 9B**

Proposed section 9B provides for emergency authorisations by agency heads in the event that none of the ministers specified in subsection 9A(3) are readily available or contactable to issue an emergency authorisation under section 9A.

The committee notes that authorised ministers are able to give authorisations orally and through a variety of forms of electronic communication. The Minister responsible for the relevant ISA agency, the Prime Minister, Foreign Minister, Defence Minister or Attorney-General may all exercise authorisation powers under section 9A. In addition, it appears that sections 19 and 19A of the *Acts Interpretation Act 1901* operate to enlarge this category of authorised decision-makers holding ministerial office. **In light of these observations, the committee seeks further advice from the Attorney-General in relation to the necessity of conferring these emergency powers on agency heads.**

Pending the Attorney-General's reply, the committee draws Senators' attention to the provision, as it may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the committee's terms of reference.

Customs Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014

Introduced into the House of Representatives on 29 October 2014

Portfolio: Immigration and Border Protection

Background

This bill amends the *Customs Act 1901* to enable goods that satisfy new rules of origin when imported into Australia from Japan to be given preferential rates of duty, giving effect to the Japan-Australia Economic Partnership Agreement.

Delegation of legislative power

Item 1, proposed subsection 153ZNB(6)

This provision provides that the regulations made for the purposes of Division 1K of the *Customs Act 1901* (related to Japanese originating goods) may apply, adopt or incorporate, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time. The explanatory memorandum states that this is necessary so the regulations can refer to ‘the general accounting principles of Japan for the purposes of the regional value content calculations’ and that these ‘principles ... may be updated in the future’ (p. 43).

In the circumstances, the committee makes no further comment on this provision.

Customs Tariff Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014

Introduced into the House of Representatives on 29 October 2014
Portfolio: Immigration and Border Protection

Background

This bill amends the *Customs Tariff Act 1995* to implement the Japan-Australia Economic Partnership Agreement by:

- providing free rates of customs duty for goods that are Japanese originating goods;
- maintaining customs duty rates for certain Japanese originating goods;
- phasing the preferential rates of customs duty for certain goods to free by 2021; and
- providing for the preferential and phasing rates of duty and maintaining excise-equivalent rates of duty on certain alcohol, tobacco and petroleum products.

The committee has no comment on this bill.

Export Finance and Insurance Corporation Amendment (Direct Lending and Other Measures) Bill 2014

Introduced into the House of Representatives on 22 October 2014

Portfolio: Trade and Investment

Background

This bill amends the *Export Finance and Insurance Corporation Act 1991* to:

- expand the Export Finance and Insurance Corporation's (EFIC) powers to allow direct lending for export transactions involving all goods; and
- provide for competitive neutrality principles to apply to EFIC's operations.

The committee has no comment on this bill.

Omnibus Repeal Day (Spring 2014) Bill 2014

Introduced into the House of Representatives on 22 October 2014
Portfolio: Prime Minister

Background

This bill amends or repeals legislation across nine portfolios.

The bill includes measures that repeal redundant and spent Acts and provisions in Commonwealth Acts, and complements the measures included in the Statute Law Revision Bill (No. 2) 2014 and the Amending Acts 1970-1979 Bill 2014.

The bill also abolishes the following bodies:

- the Fishing Industry Policy Council;
- the Product Stewardship Advisory Group; and
- the Oil Stewardship Advisory Council.

Inappropriate delegation of legislative power

Schedule 2, item 5, subsection 87A(9) of the *Broadcasting Services Act 1992*

Schedule 2, item 6, section 126 of the *Broadcasting Services Act 1992*

Schedule 2, item 10, clause 32 of schedule 6 of the *Broadcasting Services Act 1992*

Schedule 2, item 17, subsection 378(1) and 378(5) of the *Telecommunications Act 1997*

Schedule 2, item 18, section 379 of the *Telecommunications Act 1997*

Schedule 2, item 19, subsections 382(1), 382(5), 386(1), 386(5), 405(1), 405(5), 422(1) and 422(5) of the *Telecommunications Act 1997*

Schedule 2, item 20, sections 460 and 464 of the *Telecommunications Act 1997*

Schedule 2, item 21, subsection 572E(8) of the *Telecommunications Act 1997*

Item 5 of schedule 2 seeks to repeal subsection 87A(9) of the *Broadcasting Services Act 1992* which provides that the 'ACMA must, before imposing, varying or revoking a condition [on a community television licence] under

this section, seek public comment on the proposed condition or the proposed variation or revocation'. The explanatory memorandum states that the 'current consultation provision is considered unnecessary in light of the consultation requirements in section 17 of the [*Legislative Instruments Act 2003* (LI Act)]' (p. 11). No justification is given for this conclusion in the explanatory memorandum.

The consultation requirements under the LI Act do not coincide with the requirement to 'seek public comment' under subsection 87A(9). **The committee therefore seeks the Parliamentary Secretary's advice as to the justification for the repeal of subsection 87A(9) that addresses the differences between this requirement and those under section 17 of the LI Act. In particular, the committee is interested as to whether there may be situations under the LI Act requirements that mean that public comment need not be sought.**

Section 19 of the LI Act provides that the 'fact that consultation does not occur does not affect the validity or enforceability of a legislative instrument'. It does not appear that a similar 'no-invalidity clause' is applicable to the consultation requirement under subsection 87A(9). In these circumstances it may be that compliance with the requirement is a condition of a valid exercise of power under section 87A. **The committee therefore seeks the Parliamentary Secretary's advice as to why compliance with consultation requirements in this context is not sufficiently important that breach should result in an invalid decision.**

The committee notes that similar issues arise in relation to items 6, 10 and 17–21 and also seeks the Parliamentary Secretary's similar advice in relation to each of these proposed amendments.

Pending the Parliamentary Secretary's reply, the committee draws Senators' attention to these provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the committee's terms of reference.

Inappropriate delegation of legislative power**Procedural fairness**

Schedule 2, item 7, subsections 130R(3), 130T(4), 130U(4), 130ZCA(5), 130ZCA(6) and 130ZD(2) of the *Broadcasting Services Act 1992*

Schedule 2, item 8, subclauses 68(3), 70(4) and 71(4) of schedule 5 of the *Broadcasting Services Act 1992*

Schedule 2, item 9, clause 77 of schedule 5 of the *Broadcasting Services Act 1992*

Schedule 2, item 11, subclauses 91(3), 93(4) and 94(4) of schedule 7 of the *Broadcasting Services Act 1992*

Schedule 2, item 12, clauses 99 and 100 of schedule 7 of the *Broadcasting Services Act 1992*

Schedule 2, item 13, subsections 44(3), 46(4) and 47(4) of the *Interactive Gambling Act 2001*

Schedule 2, item 14, subsections 44A(5) and 44A(7) of the *Radiocommunications Act 1992*

Schedule 2, item 15, subsections 123(3), 125(4), 125AA(3), 125A(3) and 125B(3) of the *Telecommunications Act 1997*

Item 7 seeks to repeal subsections 130R(3), 130T(4), and 130U(4) of the *Broadcasting Services Act 1992*. Each of these subsections set out consultation requirements for the ACMA in determining certain industry standards. The explanatory memorandum indicates that these consultation requirements are directed to a relevant industry body or association. The explanatory memorandum states that these consultation provisions are ‘considered unnecessary in light of the consultation requirements in section 17 of the LI Act’ (p. 12). No justification is given for this conclusion in the explanatory memorandum.

In each case, as the consultation requirement concerns an industry body or association that will have a direct interest in the standard, the consultation requirements are analogous to procedural fairness requirements: that is, the provisions require an appropriate representative of affected interests to be consulted prior to a decision being made.

In light of the role that sections 130R(3), 130T(4), and 130U(4) may be considered to play in ensuring affected interests are afforded a fair hearing, compliance with consultation requirements could be considered necessary to

ensure a fair hearing. It may be noted that, in general, fair hearing requirements (at common law and under statute) are a mandatory element of making a valid decision. **The committee therefore seeks further information from the Parliamentary Secretary in relation the adequacy of section 17 of the LI Act as a replacement for these specific consultation obligations given that section 19 of that Act provides that the fact ‘that consultation does not occur does not affect the validity or enforceability of a legislative instrument’.**

Item 7 also repeals subsections 130ZCA(5), 130ZCA(6) and 130ZD(2), provisions which set out consultation requirements for the ACMA in formulating conditional access schemes. In particular, subsections 130ZCA(5) and 130ZCA(6) require the ACMA, before registering a conditional access scheme, to publish a draft of the scheme on its website, invite written submissions within a period not shorter than 14 days and have due regard to submissions received. Again, the explanatory memorandum states that these consultation provisions are ‘considered unnecessary in light of the consultation requirements in section 17 of the LI Act’ (p. 13).

The committee notes that similar issues to those set out above arise in relation this proposed amendment (in item 7) and in relation to items 8–9 and 11–15. The committee therefore seeks the Parliamentary Secretary’s similar advice in relation to each of these proposed amendments.

Pending the Parliamentary Secretary’s reply, the committee draws Senators’ attention to these provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the committee’s terms of reference.

Inappropriate delegation of legislative power

Schedule 2, item 16, sections 132 and 135 of the *Telecommunications Act 1997*

This item repeals sections 132 and 135 of the *Telecommunications Act 1997*, which set out consultation requirements for determining and varying industry standards.

Section 132 requires the ACMA to conduct public consultation, including making copies of the draft standard or variation available for inspection and to cause a notice to be published in newspapers inviting written comments.

Significantly the ACMA must have due regard to comments received. Section 135 requires the ACMA to consult at least one body or association that represents the interests of consumers before determining, varying or revoking an industry standard.

The explanatory memorandum states that these sections are ‘considered unnecessary in light of the consultation requirements in section 17 of the Legislative Instruments Act’ (at p. 17). No justification is given for this conclusion in the explanatory memorandum.

The consultation requirements under the LI Act do not coincide with the requirements under these sections. **The committee therefore seeks the Parliamentary Secretary’s advice as to the rationale for the repeal of sections 132 and 135 which addresses the differences between the requirements in these sections and those under section 17 of the LI Act.**

As previously noted, section 19 of the LI Act provides that the ‘fact that consultation does not occur does not affect the validity or enforceability of a legislative instrument’. It does not appear that a similar ‘no-invalidity clause’ is applicable to the consultation requirement under sections 132 and 135. In these circumstances it may be that compliance with the requirement is a condition of a valid standard. **The committee therefore seeks the Parliamentary Secretary’s advice as to why compliance with consultation requirements in this context is not considered to be a mandatory element of making a valid standard.**

Pending the Parliamentary Secretary’s reply, the committee draws Senators’ attention to these provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the committee’s terms of reference.

Parliamentary scrutiny

Schedule 3, items 26–27 and 38–40, section 4, subsections 62(1) and 62(2) and the Schedule to the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*

The Schedule to the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (the HW Act) contains the English text of the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* (the Basel Convention).

The explanatory memorandum (at p. 27) states that:

Duplicating the text of the Basel Convention in the HW Act requires amendments to the HW Act each time the Basel Convention is amended to ensure that the Schedule remains contemporaneous (see section 62(2) of the HW Act, which enables the regulations to amend the Schedule). The inclusion of the text of the Basel Convention also adds unnecessary length to the HW Act.

Item 40 will repeal the Schedule to the HW Act to remove the full text of the Basel Convention. Instead, Item 27 will insert a note at the end of the definition of the Basel Convention in section 4 of the HW Act to direct readers to the website where the Convention can be viewed.

As a consequence of the removal of the English text of the Convention from the Schedule to the Act, item 26 seeks to amend the definition of ‘Basel Convention’ in section 4 of the HW Act so that ‘Basel Convention’ will mean ‘the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, *as amended and in force for Australia from time to time.*’

The committee notes that under the current provisions where the text of the Basel Convention changes it is necessary for a regulation, which can be disallowed by either House of the Parliament, to be made under subsection 62(2) of the HW Act. Removing this process may therefore be said to have the potential to impact on parliamentary scrutiny. It may also make the terms of the law less accessible given that readers of the legislation would be directed to another source (the AustLII website—which may not be permanently available) to access the full terms of the Convention. **The committee therefore seeks the Parliamentary Secretary’s advice as to how often it has been necessary to update the text of the Basel Convention utilising the mechanism in subsection 62(2). The committee also seeks advice as to the original rationale for providing that the text of the Convention be included as a Schedule to the Act (rather than providing a reference to the Convention as is proposed in this bill).**

Pending the Parliamentary Secretary’s reply, the committee draws Senators’ attention to the provisions, as they may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the committee’s terms of reference.

Undue trespass on personal rights and liberties
Schedule 7, item 7, paragraph 202(2)(e) of the *Social Security (Administration) Act 1999*

This item seeks to make an addition to paragraph 202(2)(e) of the *Social Security (Administration) Act 1999* to allow a person to disclose (or further use or record) protected information that has been disclosed to them under subsection 202(2C) for the purpose of research, statistical analysis or policy development, where it is consistent with the purpose of the initial disclosure.

This proposal is justified in the explanatory memorandum on the basis that it would eliminate ‘the burden on researchers having to seek permission’ and that it ‘enhances the social and economic value of public sector information’ (p. 38). The statement of compatibility (at pp 73–75) also provides a detailed explanation for the proposed approach.

In the circumstances, the committee makes no further comment on this provision.

Statute Law Revision Bill (No. 2) 2014

Introduced into the House of Representatives on 22 October 2014

Portfolio: Attorney-General

Background

This bill corrects technical errors that have occurred in Acts as a result of drafting and clerical mistakes and repeals spent or obsolete provisions and Acts.

The committee has no comment on this bill.

Tax and Superannuation Laws Amendment (2014 Measures No. 6) Bill 2014

Introduced into the House of Representatives on 30 October 2014

Portfolio: Treasury

Background

This bill seeks to amend the law relating to taxation and grants.

Schedule 1 seeks to extend the existing business restructure roll-overs available where a member of a company or unitholder in a unit trust can defer the income tax consequences of transactions that occur in the course of a business restructure.

Schedule 2 ensures that foreign pension funds can access the managed investment trust (MIT) withholding tax regime and the associated lower rate of withholding tax on income from certain Australian investments.

Schedule 3 provides an exemption from Australian tax on income derived by certain entities engaged by the Government of the United States of America in connection with Force Posture Initiatives in Australia.

Schedules 4 and 5 ensure that changes to the amount of excise and excise-equivalent customs duty payable by taxpayers as a result of any tariff proposals tabled in the House of Representatives are taken into account in calculating fuel tax credits and the cleaner fuels grant for biodiesel and renewable diesel.

Retrospective application

Schedule 1, item 39

Schedule 1 of the bill proposes a number of amendments to the *Income Tax Assessment Act 1997* to extend the existing business restructure roll-overs available where a member of a company or unitholder in a unit trust can defer the income tax consequences of transactions that occur in the course of a business restructure.

Item 39 provides for the date of effect for amendments made in Parts 1 and 2 (10 May 2011), Division 1 of Part 3 (10 May 2011), and Division 2 of Part 3

(1 November 2008). The explanatory memorandum states that ‘broadly, the date of effect of all of these amendments is the date each change was announced by the then government’. The justification is that this ‘protects taxpayers who have acted in accordance with the announcements about how the law will be changed’ (p. 26). In the case of Division 2 of Part 3 amendments the application date is prior to the date of announcement (i.e. the amendments apply from 1 November 2008 but were announced on 10 May 2011). The explanatory memorandum, however, states that the relevant amendment is ‘beneficial for interest holders’ and that it ‘applies retrospectively to align with the application date of the subdivision 126-G fixed trust roll-over’ (p. 27).

It is of considerable concern that proposals to amend tax laws are taking so long to be brought before the Parliament after the time of announcement. Although the committee accepts that it is sometimes necessary for tax amendments to apply from the date of announcement it will generally only accept this approach as legitimate if amendments are introduced into the Parliament within six months. Where this is not done, the committee expects a detailed justification for why delay has been necessary. The longer amendments are delayed the less it can be assumed that taxpayers should reasonably expect that changes will indeed be made and the greater scope there may be for uncertainty. This is particularly so, where elections intervene between the date a proposal is announced and the date amendments are introduced. Although the current government indicated on 14 December 2013 that it would proceed with proposals previously announced, it may be noted the time frame to bring the amendments before the Parliament after this announcement itself well exceeds the committee’s six-month expectation.

The committee also notes Senate procedural order of continuing effect 44 (Taxation bills—retrospectivity) which provides that where taxation amendments are not brought before the Parliament within 6 months of being announced the bill risks having the commencement date amended by the Senate.

In light of the above comments, the committee seeks further information from the Assistant Treasurer as to why it was not possible to bring these proposals before the Parliament earlier to avoid such an extended period of retrospective application. The committee also seeks advice as to whether it is possible that some taxpayers may have relied on existing

provisions to their detriment (and may therefore be adversely affected by the retrospective application of these amendments).

Pending the Assistant Treasurer's reply, the committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.

Retrospective application Schedule 2, item 5

The application date for schedule 2 amendments is 1 July 2008. The proposal was announced on 6 November 2013. The amendments allow a foreign pension fund to access the managed investment trust (MIT) withholding tax regime and the associated lower rate of tax from the date that regime commenced (i.e. 1 July 2008). The amendment thus appears to be beneficial, and the explanatory memorandum notes that it 'will ensure that specified foreign pension funds can access the MIT withholding tax regime reflecting current industry practice' (p. 35).

The committee reiterates its preference that announced proposals to amend tax laws be brought before the Parliament within six months if they are intended to have retrospective operation but, in the circumstances, makes no further comment on the application date for these amendments.

In the circumstances, the committee makes no further comment on this provision.

Telecommunications (Industry Levy) Amendment Bill 2014

Introduced into the House of Representatives on 22 October 2014

Portfolio: Communications

Background

This bill makes consequential amendments to the *Telecommunications (Industry Levy) Act 2012* to reflect the arrangements for the assessment, collection and recovery of the telecommunications industry levy being transferred from the *Telecommunications Universal Service Management Agency Act 2012* to the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

The committee has no comment on this bill.

Telecommunications Amendment (Giving the Community Rights on Phone Towers) Bill 2014

Introduced into the House of Representatives on 27 October 2014

By: Mr Wilkie

Background

This bill seeks to create rights for the community by placing restrictions and conditions on the erection of both new phone towers and extensions to existing infrastructure.

The committee has no comment on this bill.

Telecommunications Legislation Amendment (Deregulation) Bill 2014

Introduced into the House of Representatives on 22 October 2014

Portfolio: Communications

Background

This bill abolishes the Telecommunications Universal Service Management Agency (TUSMA) and transfers its functions to the Department of Communications.

The bill also includes deregulatory measures in relation to:

- extending the Do Not Call Register registration period;
- reducing the scope of telephone pre-selection obligations,
- reducing reporting and record-keeping requirements on telecommunications companies; and
- other minor amendments.

The committee has no comment on this bill.

Treasury Legislation Amendment (Repeal Day) Bill 2014

Introduced into the House of Representatives on 22 October 2014

Portfolio: Treasury

Background

This bill amends various laws relating to taxation, superannuation and shareholdings in certain financial sector companies to:

- remove the payslip reporting requirements;
- consolidate and repeal tax provisions in 16 Acts;
- remove the deemed shareholding applied to an associate where the associate has no direct control interest in the company; and
- define 'Australia' for income tax purposes in 12 Acts.

The committee has no comment on this bill.

COMMENTARY ON AMENDMENTS TO BILLS

Freedom of Information Amendment (New Arrangements) Bill 2014

[Digest 14/14 – awaiting response]

On 28 October 2014 the House of Representatives agreed to two Government amendments, the Parliamentary Secretary to the Minister for Communications (Mr Fletcher) presented a supplementary explanatory memorandum and the bill was read a third time.

The committee has no comment on these amendments and additional materials.

SCRUTINY OF STANDING APPROPRIATIONS

The committee has determined that, as part of its standard procedures for reporting on bills, it should draw senators' attention to the presence in bills of standing appropriations. It will do so under provisions 1(a)(iv) and (v) of its terms of reference, which require the committee to report on whether bills:

- (iv) inappropriately delegate legislative powers; or
- (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

Further details of the committee's approach to scrutiny of standing appropriations are set out in the committee's *Fourteenth Report of 2005*. The following is a list of the bills containing standing appropriations that have been introduced since the beginning of the 42nd Parliament.

Bills introduced with standing appropriation clauses in the 43rd Parliament since the previous *Alert Digest*

Nil

Other relevant appropriation clauses in bills

Nil